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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

MONTVALE SURGICAL CENTER, LLC

Plaintiffs.

-v.-

HORIZON BLUE CROSS BLUE SHIELD
OF NEW JERSEY and MAQUET, INC..

Defendants.

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: Case No.: 12-cv-2374(WJM)(mf)
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NOTICE OF MOTION TO DISMISS BY DEFENDANT MAQUET, INC.

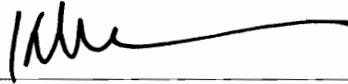
NOW COMES Defendant Maquet, Inc.. by and through counsel and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and move this Court for an Order Dismissing counts Two and Three of the Plaintiff's First Amended Complaint for the reasons set forth below:

1. Count II of the Complaint fails to state a claim upon which relief can be granted because it is barred because of her concurrent claim for benefits under 29 U.S.C. §1132(a)(1)(B).
2. Count III of the Complaint is preempted by ERISA.

Therefore, for these reasons, as more fully set in the Brief in Support of the Motion to Dismiss submitted on behalf of Defendant Maquet, Inc.. Defendant Maquet, Inc., respectfully prays that this Court dismiss Counts II and III of Plaintiff's First Amended Complaint.

Dated: New York, New York
January 18 2013

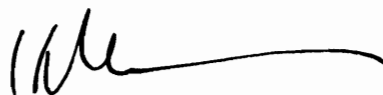
Respectfully submitted,
FOX ROTHSCHILD LLP



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CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing Notice of Motion, together with the Brief in Support of Motion, was served by through utilization of the electronic filing system of the Clerk of Court, upon all parties and/or their counsel, on this the 18 day of January, 2013.

A handwritten signature in black ink, appearing to read 'K. McMurdy', written over a horizontal line.

Keith McMurdy